



February 8, 1990

Reply To  
Attn Of: SO-125

J.D. McCubbins  
Attorney, USAF  
AFRCE-WR (ROV)  
630 Sansome Street, Room 1316  
San Francisco, California 94111-2278

USEPA SF



1251410

Re: Colbert Landfill, IAG Between United States Environmental  
Protection Agency and U.S. Air Force.

Dear Mr. McCubbins:

This letter transmits the legally binding ADMINISTRATIVE ORDER ON CONSENT AND INTERAGENCY AGREEMENT ("Agreement") between the U.S. Environmental Protection Agency ("EPA") and the U.S. Air Force ("Air Force") which commits the Air Force to pay one million four hundred fifty thousand dollars (\$1,450,000.00) in exchange for which the EPA covenants not to sue the Air Force for specified CERCLA and RCRA liability with regard to the Colbert Landfill site.

This Agreement was signed by Donald A. Kane on September 30, 1988. Since that date, EPA and the Air Force have agreed to the following changes:

1. The term "Draft" is deleted from the bottom of each page.
2. Page 2, line 16, paragraph III.2 is modified by inserting the underlined language as follows:

"It is the Air Force's position that during a portion of the time liquid wastes from Fairchild AFB, among others, were lawfully disposed at the site after consultation with Spokane County using accepted practices of the period. It is also the Air Force's position that those liquid wastes included wastes, which subsequent to their lawful disposal at the site, were later classified as 'hazardous substances'. Those wastes entered into and migrated in underlying aquifers as described in the 'Remedial Investigation, Colbert Landfill' (1987)".

AR 3.5 0001

Upon our review of the Agreement, we discovered that page 5 was excluded from the final Agreement which Donald A. Kane signed. Accordingly, we have inserted a page 5 which you have agreed reflects the final version agreed to by both of our offices. Changes 1 & 2 and the insertion of page 5 are hereby incorporated into and made a part of the ADMINISTRATIVE ORDER ON CONSENT AND INTERAGENCY AGREEMENT. If the Air Force objects to any of these changes, please contact me immediately.

As a condition precedent to the finalization of this Agreement, EPA has published a Notice of Opportunity to Comment on this Agreement in the Federal Register, 54 Fed. Reg. 52063 (December 20, 1989). As required by this Agreement, I am hereby notifying you that the public comment period has closed. Comments were received from Key Tronic which resulted in the agreed upon addition of the phrase "it is the Air Force's position that" to paragraph III.2. The other condition precedents, which are delineated on page 13, paragraph 14 of this Agreement are included as attachments to the Agreement.

Upon receipt of this letter, the U.S. EPA requests the payment of the one million four hundred fifty thousand dollars (\$1,450,000.00) to the Colbert Landfill Special Fund Trust as specified in the Agreement. This money was obligated from the Defense Environmental Restoration Account from fiscal year 1988 funds. (Memo to Goldstein from Lammi dated September 16, 1988). As required by the Agreement, copies of the payment check must be sent to:

Environmental Protection Agency  
Office of Regional Counsel  
Attention: Cynthia Mackey, Esq.  
1200 Sixth Avenue, SO-125  
Seattle, Washington 98101

State of Washington  
Attorney General, Ecology Division  
Olympia, Washington 98504  
Attention: Jeffrey Myers, Esq.

If you have any questions, please call Cynthia Mackey at (206) 442-1777. Thank you for your continued perseverance, assistance, and cooperation which helped us resolve this matter in the interest of the environment and the citizens of the United States.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robie G. Russell".

Robie G. Russell  
Regional Administrator

cc: J. Myers  
Ecology

Eileen McDonough  
Department of Justice

Cynthia Mackey  
Environmental Protection Agency

1 IN THE MATTER OF COLBERT LANDFILL, )  
2 SPOKANE COUNTY, WASHINGTON, PROCEEDING) )  
3 UNDER SECTION 122(g)(4) OF THE )  
4 COMPREHENSIVE ENVIRONMENTAL RESPONSE, )  
5 COMPENSATION, AND LIABILITY ACT OF )  
6 1980 ("CERCLA"), AS AMENDED ("SARA"). )  
7 U.S. E.P.A. DOCKET NO. 1090-01-25-107 )  
8 ADMINISTRATIVE ORDER ON CONSENT AND )  
9 INTERAGENCY AGREEMENT: (AN INTENDED )  
10 "EXPEDITED FINAL SETTLEMENT"). )  
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ADMINISTRATIVE ORDER  
ON CONSENT AND  
INTERAGENCY AGREEMENT

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1 I. JURISDICTION

2 This Administrative Order on Consent and InterAgency Agreement ("Consent  
3 Order" and "Agreement") is issued pursuant to the authority vested in the  
4 President of the United States by Section 122(g)(4) of the Comprehensive  
5 Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") as  
6 amended by the Superfund Amendments and Re-authorization Act of 1986 ("SARA"),  
7 to reach settlements in actions. That authority vested in the President has  
8 been delegated to the Administrator of the United States Environmental  
9 Protection Agency ("EPA") by Executive Order 12580, and further delegated to  
10 the Regional Administrators of the Environmental Protection Agency by  
11 Environmental Protection Agency Delegation.

12 This Administrative ("Expedited Final Settlement") Order on Consent and  
13 Agreement is issued to the Department of the Air Force ("Respondent"). The  
14 Respondent agrees to undertake all actions required of it by the terms and  
15 conditions of this Consent Order and Agreement.

16 The Respondent consents and agrees to and will not contest the  
17 Environmental Protection Agency's jurisdiction to issue this Consent Order and  
18 Agreement nor to implement or enforce its terms.

19 II. STATEMENT OF PURPOSE

20 The purpose of this Consent Order and Agreement is to set forth the  
21 Agreements reached by the Environmental Protection Agency and the Department of  
22 the Air Force and the State of Washington, Department of Ecology and the  
23 Department of the Air Force.

24 1. The Parties, E.P.A., "Ecology" and the Air Force, have reached agreement  
25 which they intend to be an "Expedited Final Settlement."

26 2. The Parties intend that certain appropriated funds from the Defense

1 Environment Restoration Account, ("D.E.R.A") be obligated and later dispursed  
2 to E.P.A. or to a "Colbert Landfill Special Fund" Trust.

3 3. This agreement is to complete the "contribution" of the Air Force to the  
4 Colbert Landfill remediation, to render the performance of the Air Force's  
5 response to the E.P.A. Notice Letter dated January 08, 1988, and for the Air  
6 Force to fulfill its statutory obligations under CERCLA/SARA and D.E.R.A.

7 4. This document is to set forth and make express certain substantive and  
8 procedural provisions agreed to by the Parties.

9 III. STATEMENT OF FACTS

10 1. The Colbert Landfill, Spokane County, Washington, was a forty (40) acre  
11 landfill operated by Spokane County or its contractor between approximately  
12 1968 and 1981. The landfill is now "closed" and "capped".

13 2. <sup>It is the Air Force's position that</sup> During a portion of that time liquid wastes from Fairchild AFB, among  
14 others, were lawfully disposed at that Site after consultation with Spokane  
15 County using accepted practices of the period. <sup>It is the Air Force's position that</sup> Those liquid wastes included  
16 wastes, <sup>which subsequent to their lawful disposal at the site, were</sup> later classified as "hazardous substances". Those wastes entered into  
17 and migrated in underlying aquifers as described in the "Remedial  
18 Investigation, Colbert Landfill" (1987).

19 3. A "remediation action" was selected as described in the "Record of  
20 Decision, Decision Summary, and Responsiveness Summary for Interim Final (sic)  
21 Remedial Action Colbert Landfill Site, Colbert, Washington." (Environmental  
22 Protection Agency Region X, September 1987).

23 4. As a result of the release or threatened release of hazardous substances  
24 into the environment, Environmental Protection Agency has undertaken a response  
25 action at the Site under section 104 of CERCLA, 42 U.S.C. 9604, and will  
26 continue that response action into the future. That response action includes:

1 the Remedial Investigation" and "Decision Process" cited above. It  
2 contemplates (as described therein) the containment, capture, extraction,  
3 treatment, and discharge of (contaminated) ground water. It also provides for  
4 the supply of safe drinking water to local residents in the immediate area of  
5 contamination. (This remediation will be more particularly described in a  
6 "Scope of Work" document now under preparation.)

7 5. In performing this response action, Environmental Protection Agency has  
8 incurred and will continue to incur response costs at or in connection with the  
9 Site. Environmental Protection Agency has expended approximately six hundred  
10 thirty-five thousand dollars (\$635,000.00) as of December 1987. The State of  
11 Washington has expended approximately two hundred eighty-five thousand dollars  
12 (\$285,000.00).

13 6. Information currently known to Environmental Protection Agency indicates;

14 (a) the amount of hazardous substances contributed to the Site by  
15 Respondent does not exceed ten percent (10%) by volume of the known hazardous  
16 substances at the Site (and represents a much smaller percentage of the  
17 probable un-recorded site waste load),

18 (b) the toxic or other hazardous substances contributed by Respondent to  
19 the Site do not contribute disproportionately to the cumulative toxic or other  
20 hazardous effects of the hazardous substances at the Site, i.e. Respondent's  
21 disposed substances are of the same general type as those disposed by the other  
22 Potentially Responsible Parties.

23 7. In evaluating the settlement embodied in this Consent Order, Environmental  
24 Protection Agency considered the potential costs of remediation at and in  
25 connection with the Site taking into account possible cost overruns in  
26 completing the remedial action, and possible future costs if the remedial



1 action is not protective of public health or the environment, and finds it to  
2 be in the Public Interest to enter into an Expedited Final Settlement with the  
3 Respondent which requires an immediate cash payment in such an amount to allow  
4 prompt design, construction, and operation of the remedial system.

5 8. Payments required to be made by the Respondent pursuant to this Consent  
6 Order are a minor portion of the total response costs at the Site. The  
7 Environmental Protection Agency, presently estimates those total cost to be  
8 approximately thirteen million seven hundred thousand dollars (\$13,700,000.00)  
9 to fourteen million dollars (\$14,000,000.00).

10 9. The Environmental Protection Agency has identified persons other than the  
11 Respondent, other Potentially Responsible Parties, who owned or operated the  
12 Site, or who arranged for disposal or treatment, or arranged with a transporter  
13 for disposal or treatment, of a hazardous substance or hazardous substances  
14 owned or possessed by such person at the Site, or who accepted a hazardous  
15 substance or hazardous substances for transport to the Site. The Environmental  
16 Protection Agency has considered the nature of its cases against these other  
17 Potentially Responsible Parties in evaluating the settlement embodied in this  
18 Consent Order and Agreement.

#### 19 IV. DETERMINATIONS

20 Based upon the Findings of Fact set forth above and on the administrative  
21 record for this Site, Environmental Protection Agency has determined that;

- 22 1. The Colbert Landfill site is a "facility" as that term is defined in  
23 section 101(9) of CERCLA, 42 U.S.C. 9601(9),
- 24 2. The Respondent, the Department of the Air Force, is a "person" as that term  
25 is defined in section 101(21) of CERCLA 42 U.S.C. 9601(21),
- 26 3. The Respondent is a "Potentially Responsible Party" within the meaning of

1 section 107(a) and 122(g)(1),

2 4. The past, present or future migration of hazardous substances at or from  
3 the Site constitute an actual or threatened "release" as that term is defined  
4 in section 101(22) of CERCLA, 42 U.S.C. 9601(22),

5 5. Prompt final settlement with the Respondent is practicable and in the  
6 public interest within the meaning of section 122(g)(1) of CERCLA, 42 U.S.C.  
7 9622(g)(1),

8 6. This Consent Order and Agreement involves only a minor portion of the  
9 response costs at the Site with respect to the Respondent pursuant to section  
10 122(g)(1) of CERCLA, 42 U.S.C. 9622(g)(1),

11 7. The amount of hazardous substances contributed to the Site by the  
12 Respondent and the toxic or other hazardous effects of the hazardous substances  
13 contributed to the Site by the Respondent are minimal in comparison to other  
14 hazardous substances at the Site pursuant to section 122(g)(1)(A) of CERCLA, 42  
15 U.S.C. 9622(g)(1)(A).

16 V. ORDER

17 Based upon the Administrative Record for this Site, the Findings of Fact  
18 and the Determinations set forth above, and to elaborate on the "Agreement in  
19 Principle" (Attachment 2), and in consideration of the promises and covenants  
20 set forth herein, it is hereby consented, agreed to, and ordered:

21 1. Payment:.

22 (a) The Respondent Air Force shall cause to be "Obligated", by a  
23 "miscellaneous obligation document" an amount of one million four hundred fifty  
24 thousand dollars (\$1,450,000.00) within thirty (30) days of the effective date  
25 of this Consent Order and Agreement. This is the total "Expedited Final  
26 Settlement" amount to be paid by the Respondent.

1 (b) Of the total payment of one million four hundred fifty thousand  
2 dollars (\$1,450,000.00) to be made by the Respondent Air Force pursuant to  
3 sub-paragraph 1.(a) of this section:

4 (1) one million, two hundred thousand dollars (\$1,200,000.00)  
5 represents the Respondent's share of the sum of the response costs of the  
6 Environmental Protection Agency (and the State of Washington, Department of  
7 Ecology) to date and of the projected costs, including possible cost overruns,  
8 of the remedial action consistent with the Record of Decision ("ROD") for this  
9 Site. These estimated total remediation costs are presently estimated by the  
10 Environmental Protection Agency to be between thirteen million, seven hundred  
11 thousand dollars (\$13,700,000.00) and fourteen million dollars (\$14,000,000.00).

12 (2) The remainder of this "Expedited Final Settlement" amount, two  
13 hundred fifty thousand dollars (\$250,000.00) represents the Respondent's share  
14 of any costs which may be incurred if Environmental Protection Agency  
15 determines that the remedial action consistent with the Record of Decision  
16 ("ROD") is not fully protective of public health or the environment; this  
17 remainder is a "premium" payment in consideration for an "Expedited Final  
18 Settlement".

19 (c) To the extent practicable, the Environmental Protection Agency shall  
20 not request funds payments until needed, and the Respondent shall direct  
21 disbursement of the funds as requested as soon as practicable. Parties intent  
22 that payment be before the end of this 1988-89 Federal Fiscal Year.

23 (d) Each payment shall be made by a United States Treasury check made payable  
24 to "Environmental Protection Agency Hazardous Substance Superfund" or, at the  
25 Environmental Protection Agency's request, to a "Colbert Landfill Special Fund"  
26 Trust, (Trust Agreement, Atch 3) which shall reference the site name, the name

1 and address of the Respondent and the Environmental Protection Agency docket  
2 number for this action, and be sent to:

3 Environmental Protection Agency Superfund,

4 P.O. Box 371003M

5 Pittsburgh, Pennsylvania

6 15251

7 or the appropriate trust address.

8 Payment checks shall be drawn against "Obligated" Defense Environmental  
9 Restoration Account funds as available through lawful appropriations and  
10 obligated by an authorized, representative official of the Department of the  
11 Air Force.

12 (e) The Respondent shall simultaneously send a copy of the payment check  
13 to:

14 Regional Counsel

15 Attn: Robert Goodstein, Esq.

16 Environmental Protection Agency Region X

17 Seattle, WA 98101

18 and to:

19 State of Washington

20 Attorney General, Ecology Division

21 Lacey, WA 98504

22 ATTN: Jeffery Myers, Esq.

23 (f) Disbursement and payment of these monies shall constitute timely,  
24 substantial performance of the response action, cost reimbursement, and  
25 satisfactory completion of all matters of the Special Notice Letter (Atch 1) as  
26 to the Potentially Responsible Party, the Department of the Air Force.

1 2. Refund of Monies

2 This "Expedited Final Settlement" is made from the transfer of funds from  
3 the Defense Environmental Restoration Account, 10 USC Chapter 160, sec 2703,  
4 authorized and appropriated by law, for the general purpose to "carry out a  
5 program of environmental restoration" with a goal of "correction of the other  
6 environmental damage" including "a removal or remedial action" and limits fund  
7 obligation to "environmental restoration function".

8 (a) Therefore should the Colbert Landfill remediation effort be abandoned,  
9 terminated, or cancelled before its completion the Environmental Protection  
10 Agency obligates itself and agrees to return a portion of funds transferred by  
11 the Respondent Air Force according to this Consent Order Agreement. "The  
12 Refund", shall be in an amount which is in the same ratio to the expedited  
13 final settlement amount as the total expenses of partial remediation until  
14 termination are to the estimated cost of total remediation at the time of  
15 termination:

16 refund amount : expended remediation costs  
17 settlement fund estimated total remediation

18 (b) The amount to be refunded shall be transferred by the Environmental  
19 Protection Agency from its Superfund Account within the same fiscal year in  
20 which the termination of the Colbert Landfill remediation occurs, or from the  
21 Colbert Landfill Special Fund Trust, or from a combination of those funds as  
22 necessary to pay "the refund". "The Refund" shall be paid to the United States  
23 Treasury.

24 (c) No other credits nor additions shall be sought by either party to this  
25 Consent Order and Agreement on account of cost savings, overruns, "scope o  
26 work" additions or deletions or for any other reason.

1 3. Intended Final Settlement

2 This Consent Order and Agreement is intended to be an "Expedited Final  
3 Settlement" as to the Department of the Air Force:

4 (a) The Environmental Protection Agency intends, consents and agrees to  
5 NOT seek further relief from the Respondent Air Force and this Consent Order  
6 and Agreement is NOT null and void, even if;

7 (1) Information not currently known to Environmental Protection Agency  
8 is discovered which would indicate that the Respondent Air Force contributed  
9 hazardous substances to the Site in such greater amount or of such greater  
10 toxic of other hazardous effects that the Respondent Air Force would no longer  
11 qualify as a de minimis party at the Site.

12 (2) Costs incurred during the completion of the remedial action  
13 "consistent with the Record of Decision" at the Site exceed or are less than  
14 present cost estimates, or

15 (3) Environmental Protection Agency determines, based upon conditions  
16 at the Site, previously unknown to Environmental Protection Agency, or  
17 information received, in whole or in part, after entry of this Consent Order,  
18 that the remedial action consistent with the Record of Decision (ROD) is not to  
19 be fully protective of public health or the environment.

20 (4) No other credits or addition shall be sought by either party to  
21 this Consent Order and Agreement on account of cost estimate savings, overruns,  
22 "scope of work" additions or deletions or any other reason.

23 4. Information Disclosure

24 The Respondent certifies that, to the best of its knowledge and belief, it  
25 has provided the Environmental Protection Agency all information currently in  
26 its possession, or in the possession of its officers, employees, contractors or

agents, which relates in any way to the ownership, operation, generation, treatment, transportation or disposal of hazardous substances at or in connection with the Site.

#### 5. Non-Admission of Liability

The Environmental Protection Agency and the Department of the Air Force intend and agree that the recitations, actions, and payments undertaken by the Respondent in accordance with this Consent Order and Agreement do not constitute an admission of liability by the Respondent Air Force nor the United States of America.

(a) The Respondent and the United States of America does not admit and retains the right to deny and/or controvert in any contemporaneous or subsequent proceedings, other than proceedings to implement or enforce this Consent Order and Agreement, the validity of the "Findings of Fact" or "Determinations" contained in this Consent Order and Agreement.

(b) Specifically, both Parties to this Consent Order and Agreement, i.e. the Environmental Protection Agency and the Respondent Air Force intend to fully retain and to not waive any defenses available, and to not admit any fact or liability in any past, present, or future action in the nature of an administrative claim, or civil action, whether tort or contract, or any other action in law or equity from any act, error, or omission in, at, or about the site, from an action, disposed materials, from the Response Action, or from any other act for themselves, their employees, agents, and contractors, or on the behalf of the United States of America.

#### 6. Reservation of rights

Nothing in this Consent Order and Agreement is intended to be nor shall it be construed as a release or covenant not to sue for any claim or cause of

1 action, administrative or judicial, civil or criminal, past, present, or  
2 future, at law or in equity, which the United States, including Environmental  
3 Protection Agency may have against any Settling Defendant for;

4 (a) Any liability as a result of failure to make the payments required by  
5 Section V, Paragraph 1, of this Consent Order and Agreement or:

6 (b) Any matters not expressly included in Covered Matters, including,  
7 without limitation, any liability for damages to natural resources.

8 (c) Nothing in this Consent Order and Agreement is intended as a release  
9 or covenant not to sue for any claim or cause of action, administrative or  
10 judicial, civil or criminal, past, present, or future, in law or in equity,  
11 which the United States, including Environmental Protection Agency, may have  
12 against any other person, firm, corporation, or other entity not a party to  
13 this Consent Order and Agreement.

14 7. Covenant Not to Sue

15 Subject to the "Reservations of Rights" in Section V, Paragraph 6, of this  
16 Consent Order, upon "Obligation" of the amount specified in Section V,  
17 Paragraph 1, Sub-paragraph (a), of this Consent Order and Agreement, the  
18 Environmental Protection Agency covenants not to sue nor to take any other  
19 civil, administrative, or judicial action against the Respondent for "Covered  
20 Matters".

21 (a) "Covered Matters" shall include any and all civil liability for  
22 reimbursement of response costs or for injunctive relief pursuant to sections  
23 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a), or section 7003 of the  
24 Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, with regard  
25 to the Site.

26 (b) In consideration of Environmental Protection Agency's "Covenant Not To



1 Sue" in Section V, Paragraph 7, of this Consent Order, the Respondent Air Force  
2 agrees not to assert any claims or causes of action against the United States,  
3 the Environmental Protection Agency, or the Hazardous Substance Superfund  
4 (except for refund of monies in the event of termination of the remediation  
5 action and non-performance of Section V, paragraph 2) arising out of Covered  
6 Matters, or to seek any other costs, damages, or attorney's fees from the  
7 United States arising out of response activities at the Site.

8 8. Contribution Protection

9 Subject to the "Reservation of Rights" (in Section V, Paragraph 6(a), (b),  
10 and (c)) of this Consent Order and Agreement, Environmental Protection Agency  
11 agrees that by entering into and carrying out the terms of this Consent Order  
12 and Agreement, the Respondent Air Force will have completely resolved its  
13 liability to the United States of America for Covered Matters pursuant to  
14 section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5), and shall not be liable for  
15 claims for contribution for Covered Matters by any other person.

16 9. Modifications

17 Any modifications or deletions to this Consent Order shall be only by  
18 mutual agreement of both parties, hereto.

19 10. Disputes

20 Any disputes involving this Consent Order and Agreement shall be submitted  
21 to the Attorney General (or his designee) to be resolved by his written opinion  
22 and decision, which shall be binding on the parties.

23 11. Audits

24 Each Party, and its designee, agent, contractor, or trustee shall keep and  
25 make available such records as to facilitate and enable a generally accredited  
26 audit to be performed.

1 12. Attorney General's Approval

2 Because this Expedited Final Settlement exceeds five hundred thousand  
3 dollars (\$500,000), the Attorney General (or his designee) must issue prior  
4 written approval of this Expedited Final Settlement embodied in this Consent  
5 Order and Agreement in accordance with section 122(g)(4) of CERCLA/SARA.

6 13. Public Comment

7 This Consent Order and Agreement shall be subject to a thirty (30) day  
8 public comment period pursuant to section 122(i) of CERCLA, 42 U.S. C. 9622  
9 (I). In accordance with section 122(i)(3) of CERCLA, 42 U.S.C. 9622(i) (3).,  
10 Environmental Protection Agency has the authority to withdraw consent to this  
11 Consent Order if comments received disclose facts or considerations which  
12 indicate that this Consent Order is inappropriate, improper or inadequate.

13 14. Conditions Precedent to Effectiveness

14 This Administrative Order on Consent and Agreement shall become effective  
15 only, after the occurrence of all of the following:

16 (a) Prior written approval of the Attorney General (or his designee)

17 (b) Written notice of acceptance of this Consent Order and Agreement in  
18 satisfaction of its claims and causes of actions against the Department of the  
19 Air Force and the release of the Respondent from future or additional liability  
20 by the State of Washington.

21 (c) Agreement, execution, and signature by duly authorized representatives  
22 of the Environmental Protection Agency and the Respondent Air Force.

23 (d) Environmental Protection Agency gives written notice of the expiration  
24 of the Public Comment period together with written notice of continuation of  
25 the mutually stated obligations under the terms of this Consent Order and  
26 Agreement to the Respondent.

1 15. Effective Date

2 The effective date of this Consent Order and Agreement shall be the date  
3 upon which the Environmental Protection Agency issues written notice to the  
4 Respondent Air Force that the public comment period pursuant to section V,  
5 Paragraph 15, of this Consent Order and Agreement has closed and that no  
6 comments received have necessitated modification of nor withdrawal from this  
7 Consent Order and Agreement.

8 16. Certification of Signatories

9 This Consent Order and Agreement shall apply to and be binding upon the  
10 Environmental Protection Agency and the Department of the Air Force and their  
11 officers, employees, agents, successors and assigns. Each signatory to this  
12 Consent Order and Agreement certifies he/she is authorized to enter into the  
13 terms and conditions of this Consent Order and Agreement and to bind legally  
14 the party represented by him/her.

15 IT IS SO AGREED, CONSENTED, AND ORDERED.

16 s/s Robert M. Burd Acting Regional Administrator for the  
17 Environmental Protection Agency

18 s/s Donald A. Kane 30 SEP 1998 for the  
19 Department of the Air Force

20 DONALD A. KANE, COL, USAF, USA  
21 Chief, Environmental Division  
22 Department of the Air Force  
23  
24  
25  
26

1 VII. ATTACHMENTS

- 2 1. Special Notice Letter.
- 3 2. Letter, "Agreement in Principle".
- 4 3. Environmental Protection Agency's Trust.
- 5 4. Attorney General's Written Approval.
- 6 5. Parallel State Proceedings
- 7 (a) Summons
- 8 (b) Complaint
- 9 (c) Consent Decree
- 10 6. Washington Notice of Satisfaction
- 11 7. Performance of Special Notice Demands

## Attachments

1. Special Notice Letter



U.S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

1200 SIXTH AVENUE  
SEATTLE, WASHINGTON 98101

JAN 08 1988

*Ecology*

REPLY TO  
ATTN OF

HW-113

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Colonel Richard A. Wolf  
Fairchild Air Force Base, U.S. Air Force  
92nd Combat Support Group  
CC Commander  
Fairchild AFB, Washington 99011-5000

SPECIAL NOTICE LETTER (42 U.S.C. §9622[e])

Dear Mr. Wolf:

This notice letter is being provided by the United States Environmental Protection Agency (EPA) pursuant to the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. § 9601 et. seq. as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. No. 99-499. EPA has documented the release or threatened release of hazardous substances, pollutants, and contaminants at the Colbert Landfill site near Spokane, Washington. You may be one of several parties responsible for such release or threatened release at the Colbert site; therefore, you have been identified as a Potentially Responsible Party (PRP) within the meaning of Section 122 of CERCLA, 42 U.S.C. §9622, as amended.

EPA, in consultation with the Washington Department of Ecology (Ecology), has determined that a Remedial Design and Remedial Action (RD/RA) is necessary for the Colbert site. The RD/RA develops the final design and then implements the remedy which has been selected and approved by EPA and Ecology. The RA will have provision for monitoring, operation, and maintenance of the system after installation. Prior to commencing a government-financed RD/RA, EPA and Ecology are hereby providing a period of time for negotiation with PRPs in an effort to enter into an agreement whereby such parties would perform the RD/RA.

EPA encourages discussion between you and the agency, and among you and the other identified PRPs. To assist PRPs in preparing proposals and negotiating with EPA concerning the Colbert Landfill RA, we have included the names and addresses of the other PRPs that EPA has identified along with information regarding the volume, nature, and ranking by volume of substances at the facility to the extent such information is available. The list is included as Enclosure A to this letter.

In accordance with CERCLA, as amended, EPA has already undertaken certain actions and incurred costs in response to conditions at the Colbert site. In addition, EPA anticipates expending additional funds for response activities

at the Colbert site under the authority of CERCLA and other laws. In accordance with Section 107 of CERCLA, 42 U.S.C. §9607, as amended, demand is hereby made for reimbursement of EPA costs plus any and all interest authorized to be recovered under that section or under any other provisions of law. Demand is also hereby made under these authorities for payment of interest on all future costs that EPA may accrue in regard to this site. Payment of these amounts may be made a part of any RD/RA agreement entered in this matter.

Pursuant to Section 122(e)(2) of CERCLA, 42 U.S.C. §9622(e)(2), as amended, EPA hereby declares a negotiation moratorium for the RD/RA activities at the Colbert site. During this moratorium period, EPA hopes to negotiate an agreement with PRPs for performance of the RD/RA.

PRPs have sixty (60) days from the date of receipt of this letter to make a good faith proposal to EPA for undertaking or financing the RD/RA. A good faith proposal is one which is in writing, and which, at a minimum, contains the following elements:

1. a statement of the willingness of the PRPs to conduct the RD/RA which is generally consistent with the EPA draft Consent Decree or provides a sufficient basis for further negotiations;
2. a clear and comprehensive technical proposal and detailed Scope of Work for promptly undertaking the RD/RA;
3. a detailed response to the EPA draft Consent Decree;
4. a demonstration of the technical capability of the PRPs to undertake the RD/RA, including evidence of qualified personnel retained by the PRPs to perform the work;
5. a statement of willingness of the PRPs to reimburse EPA for all oversight costs as provided in Section 104(a) of CERCLA, 42 U.S.C. §9604(a), as amended; and
6. evidence of financial capability of the PRPs to perform the RD/RA.

If a good faith proposal is submitted by the PRPs within the sixty (60) day period, EPA may continue to negotiate with these parties for an additional sixty (60) day period. Any agreement for performance of the RD/RA must be reached by the end of the moratorium period, and must be in the form of a Consent Decree containing terms consistent with CERCLA, as amended.



The intent of this letter is to provide notice and information, and such discussions are not to be construed as a final agency position. Due to the response necessary, EPA urges that immediate attention be given to this letter. If you have any questions please feel free to contact us. Please direct technical questions to Neil Thompson at (206) 442-7177, and legal questions to Bob Goodstein at (206) 442-8311.

Sincerely,

Charles E. Findley, Director  
Hazardous Waste Division

Enclosure

cc: Mike Blum, Ecology

2. Letter, "Agreement in Principle"



DEPARTMENT OF THE AIR FORCE  
HEADQUARTERS UNITED STATES AIR FORCE  
REGIONAL COUNSEL, WESTERN REGION (JACL)  
630 SANSOME STREET - ROOM 1316  
SAN FRANCISCO, CALIFORNIA 94111-2278

DEPARTMENT OF ECOLOGY  
MAY 09 1988

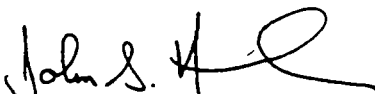
'88 MAY 11 A9:03

REPLY TO  
ATTN OF ROV (McCubbin/556-0555)

SUBJECT Confirmation of "Agreements in Principle" for a Final Settlement, in the  
Colbert Landfill Matter, Between E. P. A., the Washington Dept. of Ecology,  
and the United States Air Force

TO:  
SEE DISTRIBUTION

1. This will confirm our mutual understanding that, subject to necessary, official review, approval, and action, we have reached "Expedited Final Settlements" in the Colbert Landfill matter. One final settlement agreement is between E.P.A. and the Air Force. The other final settlement agreement is between the State of Washington (Department of Ecology) and the Air Force.
2. The Air Force has agreed it will cause Defense Environmental Restoration Account funds to be obligated, in the total amount of one million four hundred fifty thousand dollars (\$1,450,000.00) to contribute to the remediation effort at the Colbert Landfill site. This amount represents the total sum of the Air Force's contribution to the remediation costs and a premium payment amount to allow an "Expedited Final Settlement". Both E.P.A. and the State of Washington have agreed these are final settlements, the Air Force is a de minimus contributor, and the Air Force's liability and exposure will be settled with appropriate releases, covenants, and contribution protection clauses. These funds will later be disbursed upon written request by E.P.A. The named parties agreed, because of the limited statutory purpose of D.E.R.A., if the remediation action is cancelled, prior to completion, a proportionate portion of the amount obligated (transferred) would be returned to the United States Treasury.
3. The Agreements will be drafted by AFRCE/WR(ROV) and will be in the form of E.P.A.'s model Administrative Order on Consent (52 Fed. Reg. 218, 43393 et seq.). E.P.A. will contribute a funds management provision. The Department of Ecology will contribute the parallel agreement which will incorporate the E.P.A. - Air Force document and satisfy the State of Washington's legal requirements. The coordination and forwarding of these documents will be completed as soon as practicable.
4. This Agreement in Principle, in this matter, constitutes good faith progress and, subject to completion, timely, substantial compliance and performance of the Air Force's Response to E.P.A. Special Notice Letter [42 U.S.C. sec. 9622(e)], as extended.
5. Execution of the documents of agreement is to be in San Francisco as soon as practicable after the required pre-execution staffing has been completed.
6. If you have further questions, please call Mr. McCubbin, (415)556-0555.

  
JOHN S. HANNAH, MAJOR, USAF  
Regional Counsel, HQ USAF

DISTRIBUTION LIST

Mr. Robert Goodstein  
Assistant Regional Counsel  
U.S. E.P.A. Region X  
1200 Sixth Ave.  
Seattle, WA 98101

Mr. Jeffery Myers  
State of Washington, Dept. of Ecology  
Attorney General Division  
Mail Stop PV11  
Lacey, WA 98504

3. Environmental Protection Agency's Trust

APPENDIX "C"

COLBERT LANDFILL TRUST FUND

THIS DECLARATION OF TRUST, dated this 10 day of March, 198~~8~~<sup>9</sup>, is made and entered into by and among SPOKANE COUNTY ("Settlor"), and WASHINGTON TRUST BANK ("Trustee"), pursuant to the Agreements on Consent to Implement Focused Corrective Action Measures pursuant to State of Washington, Department of Ecology, and United States Environmental Protection Agency v. Key Tronic, Inc., and Spokane County, No. \_\_\_\_\_ and State of Washington, Department of Ecology v. United States Air Force, No. \_\_\_\_\_ (the "Consent Agreements").

WITNESSETH:

WHEREAS, UNITED STATES AIR FORCE has agreed to transfer, assign, and convey unto the Trustee the sum of One Million Four Hundred Fifty Thousand Dollars (\$1,450,000.00) in trust, pursuant to the terms of this Agreement; and

WHEREAS, KEY TRONIC, INC., a Washington corporation, has agreed to transfer, assign, and convey unto the Trustee the sum of Four Million Two Hundred Thousand Dollars (\$4,200,000.00) in trust, pursuant to the terms of the Consent Agreements; and

WHEREAS, funds transferred by UNITED STATES AIR FORCE and KEY TRONIC, INC., a Washington corporation, shall constitute the initial corpus of the trust hereby created and shall be held, invested, and distributed pursuant to the terms of this Agreement, it is therefore agreed as follows:

I. Trust Estate. The Trust Estate, as that term is used in this trust, shall consist of the following:

1. The assets transferred to the Trustee by UNITED STATES FORCE and KEY TRONIC, INC., a Washington corporation, as hereinabove provided; and

2. Any funds transferred to the Trustee by any other person or entity, and

3. The proceeds, investments, and reinvestments of the assets so transferred to the Trustee.

II. Trust Purpose. The Trustee shall hold, invest, reinvest, and distribute the Trust Estate, as Trustee, in accordance with the terms and conditions set forth herein. This trust is organized and shall be operated to provide a source of funds for the purpose of paying for the remedial action referenced in the Consent Agreements. In furtherance of this purpose, the Director of the Department of Ecology, hereinafter referred to as the "Director" has sole power to direct the Trustee and the distribution of the Trust Estate in the manner hereinafter provided for.

III. Distributions. The Trust Estate shall be distributed by the Trustee from time to time as directed by the Director pursuant to the Consent Agreements. The Trustee may rely with acquittance upon any direction of payment made pursuant to the Consent Agreements.

IV. Duration. This trust shall continue until the earlier of the issuance of a Certificate of Completion to SPOKANE COUNTY pursuant to the provisions of Section XXX of the Consent Agreements, or until the Trust Estate has been distributed for the activities and purposes set forth herein. If the Trust Estate has not been wholly distributed prior to the earliest date referred to in the first sentence of this paragraph, and there has not been a direction to distribute funds pursuant to Consent Agreements which will exhaust the funds, then all such remaining unappointed funds shall be delivered forthwith one-half (1/2) to the State of Washington, Department of Ecology, and one-half (1/2) to the United States Environmental Protection Agency.

V. Irrevocable Nature of Trust. The trust created by this Agreement shall be deemed irrevocable and the Settlor shall have no right whatsoever to alter, amend, revoke, or terminate this Trust Agreement in whole or in part. Further, it is the intention of KEY TRONIC, INC., a Washington corporation, and UNITED STATES AIR FORCE to transfer all of their interest in the Trust Estate transferred to the Trustee herein. Therefore, UNITED STATES AIR FORCE and KEY TRONIC, INC., a Washington corporation, and any other person or entity transferring assets to the Trustee hereunder, do hereby assign to the Trustee all right, title, and interest in and to the

Trust Estate and relinquish all administrative power over the Trust Estate or any power to control the beneficial enjoyment of the trust assets.

VI. Trustee. It is hereby directed to invest and reinvest the trust assets and such property as it from time to time deems prudent. Provided, however, that the Trustee's power to invest the trust assets shall be limited in the same manner as the ability of persons investing funds on behalf of municipalities within the State of Washington is limited pursuant to RCW 36.29.020 et seq.

VII. Powers and Duties of Trustee. Except as specifically restricted hereunder, the Trustee shall have all duties, powers, and rights imposed and granted by the laws of the State of Washington.

In addition to the duties, powers, and rights imposed and granted by law, the Trustee shall have (unless specifically restricted herein) the power and the exercise of discretion in the application thereof to:

1. Determine the allocation of receipts and expenses between income and principal in accordance with the Washington Principal and Income Act;
2. Rely with acquittance upon the advice of counsel on questions of law;
3. Merge or combine any trusts hereunder with the trust or trusts otherwise established for the same purpose and substantially the same provisions, and thereafter administer and distribute such combined estate as one;
4. Appoint an ancillary trustee or agent to facilitate the management of assets located in another state, if any;
5. At any time to resign as Trustee of the trust created by this instrument without court proceeding, by delivering written notice of resignation as hereinafter provided;
6. To commence or defend at the expense of the trust such litigation with respect to the trust or any property of the trust as the Trustee may deem advisable;



7. Compromise, submit to arbitration, release with or without consideration, and otherwise adjust any claims in favor of or against the trust.

VIII. Resignation. The Trustee shall have the right to resign at any time by delivering its resignation in writing to the Settlor, such resignation to take effect upon the acceptance of appointment in writing by successor Trustee. Upon any such resignation, the Settlor shall deliver to the Director a copy of the Letter of Resignation, together with a letter proposing to appoint a successor Trustee. Provided, however, any successor Trustee shall be a corporation authorized to conduct trust business within the State of Washington and at the time of its appointment have assets of not less than One Hundred Million Dollars (\$100,000,000.00) of trust funds.

Upon the approval of successor Trustee by the Director, the Settlor shall in writing appoint a successor Trustee. Acceptance of appointment of successor Trustee shall be in writing and shall become effective upon receipt by the Settlor of the notice of such acceptance.

Any successor Trustee appointed under this article shall, upon appointment, immediately succeed to all powers, rights, discretions, obligations, and immunities of the Trustee under this Agreement with the same effect as though successor Trustee were originally named as Trustee in this Agreement.

IX. Compensation. The Trustee shall be entitled to be paid reasonable compensation as agreed upon by the Settlor and the Trustee.

X. Governing Law. This Trust Agreement shall be administered, construed, and enforced according to the laws of the State of Washington. Should any provision of this Agreement be or become invalid or unenforceable, the remaining provisions of this Agreement shall be and continue to be fully effective.

XI. Notices. Any notices or other communication required or permitted by this Agreement to be delivered to or served on the Trustee shall be deemed properly delivered to, or serve on, and received by the Trustee when personally delivered to a trust



4. Attorney General's Written Approval



U.S. Department of Justice  
Land and Natural Resources Division

Office of the Assistant Attorney General  
# 90-11-3-327

Washington, D.C. 20530

MEMORANDUM FOR THE DEPUTY ATTORNEY GENERAL

Re: Formal approval of documents finalizing settlement previously approved by Deputy Attorney General Christensen on December 28, 1988: Administrative Agreements Settling USAF liability for response costs under CERCLA at the Colbert Landfill, Spokane, Washington.

AMOUNT OF PROPOSED SETTLEMENT

\$ 1,450,000

( X ) APPROVED  
( ) DISAPPROVED

EDWARD S.G. DENNIS  
Acting Deputy Attorney General

9/13/89  
DATE

5. Parallel State Proceedings  
Settlement Agreement

## SETTLEMENT AGREEMENT

WHEREAS, this Agreement is made and entered into by the United States Air Force ("Air Force") and the State of Washington ("State") to resolve the State's claims against Air Force under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9607, for response costs arising from the remedial action at Colbert Landfill in Spokane County, Washington (the "Site");

WHEREAS, the Air Force denies any responsibility or liability to the State or to any person or entity under any statute, regulation, or rule of common law for any claim, including any claim for property damage, removal, or remedial action and/or any other cost associated with cleaning up the Site or natural resource damages at the Site;

WHEREAS, the Air Force, without admitting to any liability, has entered into an Administrative Order on Consent and Interagency Agreement ("IAG") with the U.S. Environmental Protection Agency ("EPA") pursuant to CERCLA §§ 120, 122, 42 U.S.C. §§ 9629, 9622, in which the Air Force has agreed to obligate \$1.45 million towards the costs of cleaning up the Site in order to satisfy the CERCLA liability of the Air Force arising from the Site;

WHEREAS, the State and the Air Force have agreed that this matter should be resolved through this Agreement without litigation;

IT IS THEREFORE AGREED:

1. The terms of the IAG, attached hereto as Exhibit 1, are incorporated herein by reference. In the event of any inconsistency between the IAG and this Agreement, the terms of the IAG shall control.

2. The Air Force agrees to abide by the terms of the IAG to satisfy any liability to the State under CERCLA arising out of the Site.

3. The State agrees that the Air Force's completion of its obligations under the IAG shall resolve any claim under CERCLA the State may have against the Air Force arising out of the Site. The payment of funds as provided by the IAG is expressly recognized as a condition precedent to the satisfaction of the State's claims under CERCLA. Upon such payment, the State covenants not to sue the United States for further recovery of response costs under CERCLA based on the Air Force's involvement at the Site. The State specifically reserves any and all rights arising out of any other provision of law, including but not limited to the State Model Toxics Control Act (Initiative 97).

4. This Agreement shall terminate upon termination of the IAG, except that the covenant not to sue shall continue without termination.

5. The signatories hereto certify that they are duly authorized representatives of their principals.

STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

By: Carol L. Fleskes  
CAROL L. FLESKES  
Hazardous Waste Investigations  
and Cleanup Program  
Title: Program Manager  
Date: October 25, 1989

THE UNITED STATES AIR FORCE

By: GARY D. VEST  
GARY D. VEST  
Deputy Assistant Secretary of  
the Air Force  
Title: Environment, Safety and Occupational Health  
Date: 13 OCT 1989

COUNSEL FOR THE STATE OF  
WASHINGTON DEPARTMENT OF  
ECOLOGY:

STATE OF WASHINGTON  
OFFICE OF ATTORNEY GENERAL

BY: JEFFREY S. MYERS  
JEFFREY S. MYERS  
Title: Assistant Attorney General  
Date: October 26, 1989

COUNSEL FOR THE UNITED STATES:

U. S. DEPARTMENT OF JUSTICE

RICHARD B. STEWART  
Assistant Attorney General  
Land & Natural Resources  
Division

J. STEVEN ROGERS  
J. STEVEN ROGERS  
Division Counsel  
Land & Natural Resources  
Division

Date: 21 September 1989



## 6. Washington Notice of Satisfaction



Ken Eikenberry

# ATTORNEY GENERAL OF WASHINGTON

7th FLOOR, HIGHWAYS-LICENSES BUILDING PB-71 • OLYMPIA, WASHINGTON 98504-8071

January 4, 1990

J.D. McCubbin  
Attorney, USAF  
AFRCE-WR  
630 Sansome Street, Room 1316  
San Francisco, CA 94111-2278

RECEIVED  
JAN 5 1990  
OFFICE OF REGIONAL COUNSEL  
EPA - REGION 8

Re: Colbert Landfill, Washington  
Notice of Satisfaction

Dear Mr. McCubbin:

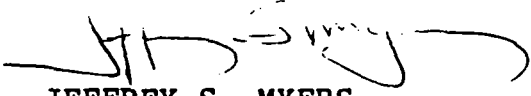
This letter is intended to serve as Attachment 6 to the Interagency Agreement (IAG) between EPA and the Air Force in settlement of the Air Force's liability for remedial action at the Colbert Landfill.

The Settlement Agreement between the State of Washington, Department of Ecology, and Air Force shall constitute the notice of acceptance required by paragraph 14(b) of the IAG. Subject to its entry into force and satisfactory performance, the Air Force will be released from future liability under CERCLA to the extent provided by paragraph 3 therein.

Also, please note that, based upon the agreement of all parties, the Settlement Agreement will be substituted for the Parallel State Proceedings listed as Attachment 5 to the IAG.

This letter is not intended to expand upon the terms of either the IAG or Settlement Agreement.

Very truly yours,

  
JEFFREY S. MYERS  
Assistant Attorney General  
Ecology Division - M/S PV-11  
Olympia, WA 98504  
(206) 459-6134

JSM/bw

cc: Cindy Mackey ✓

## 7. Performance of Special Notice Demands



February 8, 1990

Reply To  
Attn. Of: SO-125

J.D. McCubbins  
Attorney, USAF  
AFRCE-WR (ROV)  
630 Sansome street, Room 1316  
San Francisco, California 94111-2278

Re: Administrative Order on Consent and Interagency Agreement  
Regarding the Colbert Landfill

Dear Mr. McCubbins:

As specified in paragraph V (i)(f), page 7, of the ADMINISTRATIVE ORDER ON CONSENT AND INTERAGENCY AGREEMENT, disbursement and payment of one million four hundred fifty thousand dollars (\$1,450,000.00) to the Colbert Landfill Special Fund Trust will constitute performance of all matters in the Special Notice Letter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Robie G. Russell".

Robie G. Russell  
Regional Administrator